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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

'08 CV 1501 H AJB

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 AEGIS SECURITY INSURANCE
12 COMPANY, a Pennsylvania corporation;

13 Plaintiffs,

14 v.

15 MARK J. MCINTYRE, an individual;
QAMAR S. KHAN, an individual,

16 Defendants.

CASE NO.

**AEGIS SECURITY INSURANCE
COMPANY'S COMPLAINT FOR
DECLARATORY RELIEF**

18 Plaintiff Aegis Security Insurance Company ("Aegis") herein alleges:

19 1. At all times herein mentioned, plaintiff Aegis was a corporation organized
20 and existing under the laws of the State of Pennsylvania with its principal place of
21 business in Harrisburg, Pennsylvania. Aegis is doing business as an admitted
22 insurance carrier in the State of California.

23 2. Plaintiff is informed and believes and thereon alleges that defendant Mark
24 J. McIntyre ("McIntyre") is a United States citizen domiciled in the City of
25 Oceanside, County of San Diego, State of California.

26 3. Plaintiff is informed and believes and thereon alleges that defendant Qamar
27 S. Khan ("Khan") is a United States citizen domiciled in the County of San
28 Diego, State of California.

1 4. Jurisdiction is proper under 28 U.S.C. section 1332 in that the amount in
2 controversy exceeds \$75,000, and is between citizens of different states.

3 5. Venue is proper under 28 U.S.C. section 1391(a) in that the subject
4 insurance policy was issued by plaintiff to defendant McIntyre in this judicial
5 district and a substantial part of the events or omissions giving rise to the claim
6 occurred in this judicial district.

7 GENERAL ALLEGATIONS

8 6. Plaintiff is informed and believes and thereon alleges that McIntyre is the
9 owner of the residence located at 3185 Toopal Drive, Oceanside, California,
10 92054 (the "subject property").

11 7. Plaintiff Aegis issued homeowner's insurance policy no. AH000732 to its
12 named insured, defendant McIntyre, effective from August 24, 2006 to August
13 24, 2007 (the "policy") covering the subject property. Among other things, the
14 policy includes personal liability coverage with a limit of liability of \$300,000
15 for damages because of bodily injury or property damage caused by an
16 occurrence.

17 8. The pertinent policy language regarding personal liability coverage states:

18 SECTION II – LIABILITY COVERAGES

19 A. Coverage E – Personal Liability

20
21 If a claim is made or a suit is brought against an "insured" for
22 damages because of "bodily injury" or "property damage"
23 caused by an "occurrence" to which this coverage applies, we
will:

- 24 1. Pay up to our limit of liability for the damages for which
25 the "insured" is legally liable. . . .
- 26 2. Provide a defense at our expense by counsel of our choice

27 . . .

1 9. The policy defined "bodily injury," "property damage" and "occurrence" as
2 follows:

3 * * *

4 2. "Bodily injury" means bodily harm, sickness or disease,
5 including required care, loss of services and death that results.

6 * * *

7 8. "Occurrence" means an accident, including continuous or
8 repeated exposure to substantially the same general harmful
9 conditions, which results, during the policy period, in:

10 a. "Bodily injury"; or

11 b. "Property damage".

12 9. "Property damage" means physical injury to, destruction of, or
13 loss of use of tangible property.

14 10. The policy contains a California Amendatory Endorsement (ISO form
15 no. CHO-14). In part, the endorsement amended the definition of "bodily injury"
16 in the policy's personal liability coverage to include "personal injury":

17 CALIFORNIA AMENDATORY ENDORSEMENT

18 * * *

19 SECTION II – LIABILITY COVERAGES

20 Personal Injury

21 Under A. Coverage E – Personal Liability, the definition "bodily
22 injury" is amended to include personal injury.

23 "Personal Injury" means injury arising out of one or more of the
24 following offenses:

- 25 1. false arrest, detention or imprisonment, or malicious
26 prosecution;
27 2. libel, slander or defamation of character; or
28 3. invasion of privacy, wrongful eviction or wrongful entry.

1 11. The policy also contained a Personal Injury Exclusion-California
2 endorsement (ISO form no. CHO-17) which deleted the personal injury coverage
3 that had been added by the California Amendatory Endorsement:

4 PERSONAL INJURY EXCLUSION-CALIFORNIA

5 The Personal Injury coverage found in Endorsement CHO-14,
6 California Amendatory Endorsement is hereby deleted.

7 For a premium credit, the following is deleted, in its entirety, from
8 Endorsement CHO-14, California Amendatory Endorsement.

9 SECTION II – LIABILITY COVERAGES

10 Personal Injury

11 Under A. Coverage E – Personal Liability, the definition
12 “bodily injury” is amended to include personal injury.

13 “Personal Injury” means injury arising out of one or more of
14 the following offenses:

- 15 1. false arrest, detention or imprisonment, or malicious
16 prosecution;
- 17 2. libel, slander or defamation of character; or
- 18 3. invasion of privacy, wrongful eviction or wrongful entry.

18 * * *

19 12. Plaintiff is informed and believes and thereon alleges that on March 4,
20 2008, defendant Khan filed a complaint (the “Khan complaint”) against McIntyre
21 and others in the Central Division of the San Diego Superior Court, case no. 37-
22 2008-00079216-CU-WT-CTL (the Khan litigation”).

23 13. Plaintiff is informed and believes and thereon alleges that the Khan
24 complaint makes the following allegations:

- 25 a. Khan is a male Muslim of Pakistani descent
- 26 b. In January of 2005, Khan was hired by Providers Financial, Inc.
27 (“Providers”) as a loan officer.
- 28 c. Defendant McIntyre is a mortgage broker and the president of Providers.

- 1 d. Throughout Khan's employment with Providers, he was subjected to a
2 constant barrage of unwelcome and offensive verbal and physical abuse
3 from McIntyre. Khan was mocked for his ethnic name and his religion.
- 4 e. Khan was also subjected to severe physical abuse, particularly by
5 McIntyre, who would (1) prod Khan in the buttocks with a golf club he
6 kept in the office, (2) physically pin Khan to the office floor and force his
7 groin into Khan's face while restraining him, (3) place him in a choke
8 hold and (4) pinch Khan's nipples.
- 9 f. During the course of Khan's employment with Providers, McIntyre
10 allowed and encouraged the harassment and discrimination of Khan
11 whose repeated protests were routinely ignored.
- 12 g. In retaliation for Khan's complaints, he was terminated on March 13,
13 2007.

14 14. Plaintiff is informed and believes and thereon alleges that based on
15 these core allegations in the Khan complaint, Khan alleged the following causes
16 of action against McIntyre for (a) Retaliation in Violation of Government Code
17 §12490 et seq., (b) Violation of Government Code §12490 et seq. - Sexual
18 Harassment, (c) Violation of Government Code §12490 et seq. - Religious
19 Harassment, (d) Violation of Government Code §12490 et seq. - National Origin
20 Harassment, (d) Violation of Civil Code §§ 1708 and 1708.5 (sexual battery), (e)
21 assault, (f) battery, and (g) false imprisonment.

22 15. Plaintiff is informed and believes and thereon alleges that one or more
23 of the activities identified in the Khan complaint may have also occurred while
24 Khan was attending a number of parties at the subject property.

25 16. Plaintiff is informed and believes and thereon alleges that the prayer to
26 the Khan complaint seeks, among other things, compensatory and incidental
27 damages, including lost wages, employee benefits, emotional distress and other
28 special and general damages in the amount of \$2,000,000.

19. Plaintiff is informed and believes and thereon alleges that defendants McIntyre and Khan contend that plaintiff's policy provides coverage to satisfy Khan's claims for damages against McIntyre in the Khan litigation.

(Declaratory Relief – Declaration That There is No Duty to Defend or Indemnify McIntyre as to the Third Cause of Action in the Khan Litigation for Retaliation in Violation of Government Code §12490 et seq.)

21. An actual controversy now exists in that plaintiff contends, and defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under the policy as to the third cause of action in the Khan litigation for Retaliation in Violation of Government Code section 12490 *et seq.*

22. Plaintiff desires a declaration that Aegis owes no duty to defend or indemnify McIntyre against the claim for Retaliation in Violation of Government Code section 12490 *et seq.* brought against him in the Khan litigation such that plaintiff may properly ascertain its obligations under the insurance contract with McIntyre. Plaintiff has no adequate remedy at law to provide for the prospective determination of its obligations to McIntyre.

(Declaratory Relief – Declaration That There is No Duty to Defend or Indemnify McIntyre as to the Fourth Cause of Action in the Khan Litigation for Violation of Government Code §12490 et seq. - Sexual Harassment)

1 23. Plaintiff realleges and incorporates by reference paragraphs 1 through
2 22 as if fully set forth herein.

3 24. An actual controversy now exists in that plaintiff contends, and
4 defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under
5 the policy as to the fourth cause of action in the Khan litigation for Violation of
6 Government Code §12490 *et seq.* - Sexual Harassment.

7 25. Plaintiff desires a declaration that Aegis owes no duty to defend or
8 indemnify McIntyre against the claim for Violation of Government Code §12490
9 *et seq.* - Sexual Harassment brought against him in the Khan litigation such that
10 plaintiff may properly ascertain its obligations under the insurance contract with
11 McIntyre. Plaintiff has no adequate remedy at law to provide for the prospective
12 determination of its obligations to McIntyre.

13 **THIRD CAUSE OF ACTION**

14 **(Declaratory Relief – Declaration That There is No Duty to Defend or**
15 **Indemnify McIntyre as to the Fifth Cause of Action in the Khan Litigation**
16 **for Violation of Government Code §12490 *et seq.* – Religious Harassment)**

17 26. Plaintiff realleges and incorporates by reference paragraphs 1 through
18 25 as if fully set forth herein.

19 27. An actual controversy now exists in that plaintiff contends, and
20 defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under
21 the policy as to the fifth cause of action in the Khan litigation for Violation of
22 Government Code §12490 *et seq.* – Religious Harassment.

23 28. Plaintiff desires a declaration that Aegis owes no duty to defend or
24 indemnify McIntyre against the claim for Violation of Government Code §12490
25 *et seq.* – Religious Harassment brought against him in the Khan litigation such
26 that plaintiff may properly ascertain its obligations under the insurance contract
27 with McIntyre. Plaintiff has no adequate remedy at law to provide for the
28 prospective determination of its obligations to McIntyre.

FOURTH CAUSE OF ACTION

(Declaratory Relief – Declaration That That There is No Duty to Defend or Indemnify McIntyre as to the Sixth Cause of Action in the Khan Litigation for Violation of Government Code §12490 et seq. –National Origin Harassment)

29. Plaintiff realleges and incorporates by reference paragraphs 1 through 28 as if fully set forth herein.

30. An actual controversy now exists in that plaintiff contends, and defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under the policy as to the sixth cause of action in the Khan litigation for Violation of Government Code §12490 *et seq.* –National Origin Harassment.

31. Plaintiff desires a declaration that Aegis owes no duty to defend or indemnify McIntyre against the claim for Violation of Government Code §12490 *et seq.* –National Origin Harassment brought against him in the Khan litigation such that plaintiff may properly ascertain its obligations under the insurance contract with McIntyre. Plaintiff has no adequate remedy at law to provide for the prospective determination of its obligations to McIntyre.

FIFTH CAUSE OF ACTION

(Declaratory Relief – Declaration That That There is No Duty to Defend or Indemnify McIntyre as to the Tenth Cause of Action in the Khan Litigation for Violation of Civil Code §§ 1708 and 1708.5)

32. Plaintiff realleges and incorporates by reference paragraphs 1 through 31 as if fully set forth herein.

33. An actual controversy now exists in that plaintiff contends, and defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under the policy as to the tenth cause of action in the Khan litigation for Violation of Civil Code sections 1708 and 1708.5.

34. Plaintiff desires a declaration that Aegis owes no duty to defend or indemnify McIntyre against the claim for Violation of Civil Code sections 1708

1 and 1708.5 brought against him in the Khan litigation such that plaintiff may
 2 properly ascertain its obligations under the insurance contract with McIntyre.
 3 Plaintiff has no adequate remedy at law to provide for the prospective
 4 determination of its obligations to McIntyre.

5 **SIXTH CAUSE OF ACTION**

6 **(Declaratory Relief – Declaration That There is No Duty to Defend or** 7 **Indemnify McIntyre as to the Eleventh Cause of Action in the Khan** **Litigation for Assault)**

8 35. Plaintiff realleges and incorporates by reference paragraphs 1 through
 9 34 as if fully set forth herein.

10 36. An actual controversy now exists in that plaintiff contends, and
 11 defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under
 12 the policy as to the eleventh cause of action in the Khan litigation for assault.

13 37. Plaintiff desires a declaration that Aegis owes no duty to defend or
 14 indemnify McIntyre against the claim for assault brought against him in the Khan
 15 litigation such that plaintiff may properly ascertain its obligations under the
 16 insurance contract with McIntyre. Plaintiff has no adequate remedy at law to
 17 provide for the prospective determination of its obligations to McIntyre.

18 **SEVENTH CAUSE OF ACTION**

19 **(Declaratory Relief – Declaration That There is No Duty to Defend or** 20 **Indemnify McIntyre as to the Twelfth Cause of Action in the Khan Litigation** **for Battery)**

21 38. Plaintiff realleges and incorporates by reference paragraphs 1 through
 22 37 as if fully set forth herein.

23 39. An actual controversy now exists in that plaintiff contends, and
 24 defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under
 25 the policy as to the twelfth cause of action in the Khan litigation for battery.

26 40. Plaintiff desires a declaration that Aegis owes no duty to defend or
 27 indemnify McIntyre against the claim for battery brought against him in the Khan
 28 litigation such that plaintiff may properly ascertain its obligations under the

1 insurance contract with McIntyre. Plaintiff has no adequate remedy at law to
2 provide for the prospective determination of its obligations to McIntyre.

3 **EIGHTH CAUSE OF ACTION**

4 **(Declaratory Relief – Declaration That There is No Duty to Defend or**
5 **Indemnify McIntyre as to the Thirteenth Cause of Action in the Khan**
6 **Litigation for False Imprisonment)**

7 41. Plaintiff realleges and incorporates by reference paragraphs 1 through
8 40 as if fully set forth herein.

9 42. An actual controversy now exists in that plaintiff contends, and
10 defendants dispute, that Aegis has no duty to defend or indemnify McIntyre under
11 the policy as to the thirteenth cause of action in the Khan litigation for false
12 imprisonment.

13 43. Plaintiff desires a declaration that Aegis owes no duty to defend or
14 indemnify McIntyre against the claim for false imprisonment brought against him
15 in the Khan litigation such that plaintiff may properly ascertain its obligations
16 under the insurance contract with McIntyre. Plaintiff has no adequate remedy at
17 law to provide for the prospective determination of its obligations to McIntyre.

18 **PRAYER**

19 WHEREFORE, plaintiff prays for judgment as follows:

20 1. **As to the First Cause of Action:**

21 a. For judicial determination that there is no duty to defend or
22 indemnify McIntyre for damages allegedly due under the third cause of
23 action in the Khan litigation for Retaliation in Violation of
24 Government Code §12490 et seq.);

25 b. For costs of suit and for such further relief as the court deems
26 just and proper.

27 2. **As to the Second Cause of Action:**

28 a. For judicial determination that there is no duty to defend or
indemnify McIntyre for damages allegedly due under the fourth cause

1 of action in the Khan litigation for Violation of Government Code
2 §12490 et seq. – sexual harassment;

3 b. For costs of suit and for such further relief as the court deems
4 just and proper.

5 3. As to the Third Cause of Action:

6 a. For judicial determination that there is no duty to defend or
7 indemnify McIntyre for damages allegedly due under the fifth cause of
8 action in the Khan litigation for Violation of Government Code §12490
9 et seq. – religious harassment;

10 b. For costs of suit and for such further relief as the court deems
11 just and proper.

12 4. As to the Fourth Cause of Action:

13 a. For judicial determination that there is no duty to defend or
14 indemnify McIntyre for damages allegedly due under the sixth cause of
15 action in the Khan litigation for Violation of Government Code §12490
16 et seq. – national origin harassment;

17 b. For costs of suit and for such further relief as the court deems
18 just and proper.

19 5. As to the Fifth Cause of Action:

20 a. For judicial determination that there is no duty to defend or
21 indemnify McIntyre for damages allegedly due under the tenth cause
22 of action in the Khan litigation for Violation of Civil Code §§ 1708
23 and 1708.5;

24 b. For costs of suit and for such further relief as the court deems
25 just and proper.

26 6. As to the Sixth Cause of Action:

27 a. For judicial determination that there is no duty to defend or
28 indemnify McIntyre for damages allegedly due under the eleventh

1 cause of action in the Khan litigation for assault;

2 b. For costs of suit and for such further relief as the court deems
3 just and proper.

4 7. As to the Seventh Cause of Action:

5 a. For judicial determination that there is no duty to defend or
6 indemnify McIntyre for damages allegedly due under the twelfth cause
7 of action in the Khan litigation for battery;

8 b. For costs of suit and for such further relief as the court deems
9 just and proper.

10 8. As to the Eighth Cause of Action:

11 a. For judicial determination that there is no duty to defend or
12 indemnify McIntyre for damages allegedly due under the thirteenth
13 cause of action in the Khan litigation for false imprisonment;

14 b. For costs of suit and for such further relief as the court deems
15 just and proper.

16
17 Dated: August 15, 2008

MUNRO SMIGLIANI & JORDAN, LLP

18
19
20 By: 

R. Michael Jordan, Esq.

David M. Plouff, Esq.

Attorneys for Plaintiff Aegis Security
Insurance Company

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
AEGIS SECURITY INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Dauphin County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
(see attachment)

DEFENDANTS

MARK J. MCINTYRE
QAMAR S. KHAN

County of Residence of First Listed Defendant San Diego County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INSTEAD

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:

Declaratory Relief re: Duty to Defend and Indemnity Insured

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

Declaratory Relief

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/15/2008

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

13117

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

08/15/08

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154117 - MB

**August 15, 2008
16:39:19**

Civ Fil Non-Pris

USAO #: 08CV1501 CIVIL FILING

Judge.: MARILYN L HUFF

Amount.:

\$350.00 CK

Check#: BC71111

Total-> \$350.00

**FROM: AEGIS SECURITY INSURANCE CO VS
MARK J MCINTYRE, ET AL**